TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. ~~150~~ 197.

WILLIAM DUGALD STUART, PLAINTIFF IN ERROR,

vs.

THE CITY OF EASTON AND THE COUNTY OF NORTHAMPTON.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FILED JULY 13, 1896.
CERTIORARI AND RETURN FILED DECEMBER 10, 1896.

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(16,335.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 556.

WILLIAM DUGALD STUART, PLAINTIFF IN ERROR,

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THE CITY OF EASTON AND THE COUNTY OF NORTHAMPTON.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 10, 1896.

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UNITED STATES OF AMERICA, *ss:* (1)

To the President of the United States.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Pennsylvania, Greeting:

Because of the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you between William Dugald Stuart, an alien, a subject of the Queen of Great Britain, residing in London, England, *vs.* the City of Easton and the County of Northampton, corporations of the State of Pennsylvania, citizens of said State and residing in the Eastern District thereof, a manifest error hath happened, to the great damage of the said plaintiff as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Third Circuit, together with this writ, so that you have the same at the City of Philadelphia within thirty days, in the said United States Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 10th day of May, in the year of our Lord one thousand eight hundred and ninety-five.

SAMUEL BELL,

Clerk of the Circuit Court of the United States, Eastern District of Pennsylvania.

Allowed by Geo. M. Dallas, Cir. Judge.
May 10, 1895.

UNITED STATES OF AMERICA, *ss:* (2)

To the President of the United States.

To the City of Easton and the County of Northampton, *Greeting:*

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia within thirty days, pursuant to a writ of error,

filed in the Clerk's Office of the Circuit Court of the United States in and for the Eastern District of Pennsylvania in the Third Circuit, wherein William Dugald Stuart is plaintiff in error, and you are defendant in error, to shew cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George M. Dallas, Judge of the Circuit Court of the United States this day of May, in the year of our Lord one thousand eight hundred and ninety-five.

GEORGE M. DALLAS, Cir. J.
May 10th, 1895.

(3) May 13, 1895. Service is hereby accepted. Aaron Goldsmith, Attorney for the City of Easton. Edw. J. Fox, Attorney for the County of Northampton.

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(4) IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA, IN THE THIRD CIRCUIT.

April Session 1888. No. 51.

WILLIAM DUGALD STUART, an alien and subject of the Queen of Great Britain, resident in England,

vs.

CITY OF EASTON and COUNTY OF NORTHAMPTON, corporations incorporated under the laws of the State of Pennsylvania and citizens of the said State, residents in the Eastern District of Pennsylvania.

UNITED STATES OF AMERICA, EASTERN DISTRICT OF PENNSYLVANIA, } *ss.*

Pleas and proceedings before the Honorable the Judges of the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, of April Session, 1888, No. 51.

It is thus contained:

Be it remembered that on the twenty-sixth day of July, A. D. 1888, William Dugald Stuart by his Attorney C. Berkeley Taylor, Esquire, comes into our Court here and sues forth therefrom a writ of summons in ejectment against the City of Easton and the County of Northampton which with the endorsement and return thereto is in the words and figures following, to wit:

UNITED STATES.
EASTERN DISTRICT OF PENNSYLVANIA. } *sct.* (5)

THE PRESIDENT OF THE UNITED STATES,

To the Marshal of the Eastern District of Pennsylvania, Greeting:

We command you, that you summon the City of Easton and the County of Northampton, corporations of the State of Pennsylvania, late of your District, if they may be found therein, so that they be and appear before the Judges of the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, at a session of the same Court, to be holden at Philadelphia, on the first Monday of August next, then and there to answer to a certain complaint made by William Stuart, a citizen of London, England, that the said defendants now have in their actual possession a lot of ground situate in the City late town of Easton and County of Northampton and State of Pennsylvania in the centre of the great square of said town containing eighty feet in length north and south and eighty feet in breadth east and west together with all ways, waters, water courses, liberties, easements, privileges, profits, commodities, advantages and appurtenances thereunto belonging (being at the intersection of Third and Northampton avenues in said City) the right of possession or title to which he, the said William Stuart, says is in him and not in the said the City of Easton and County of Northampton, all of which he the said William Stuart avers he is prepared to prove before our said Court. Hereof fail not. And you have then there this writ.

Witness the Honorable Samuel F. Miller, Senior Associate | Chief Jus- (6)
tice of the Supreme Court of the United States, at Philadelphia, this twenty-sixth day of July, A. D. 1888, and in the 113th year of the Independence of the United States.

[SEAL]

SAMUEL BELL,
Clerk of the Circuit Court, U. S.

Return: July 27, 1888. Served on the City of Easton and the County of Northampton by giving a true and attested copy of the within writ to Charles F. Chidsey, Mayor of the said City of Easton, and by giving a like copy to Richard Deemer and Edwin D. Shortz, two of the Commissioners of the said County of Northampton, and making known the contents thereof to each of them respectively.

James L. Marshall being duly sworn according to law deposes and says that he served the within writ in manner and form and at the time as set forth in the above return.

JAMES L. MARSHALL,
Deputy U. S. Marshal.

Sworn and subscribed this 6th day of August, A. D. 1888.

W. VON A. WILLIAMSON,
Pro. Clerk C. C. U. S.

Endorsed: No. 51. April Session, 1888, Circuit Court, U. S. Stuart *vs.* The City of Easton *et al.* Summons in ejectment. Returnable on the first Monday of August next. C. Berkeley Taylor, Attorney for Plaintiff.

(7) And thereupon, afterwards, to wit, on the fifteenth day of June, A. D. 1889, the defendant, the City of Easton, came into Court here and files its pleas as follows, to wit:

STUART	U. S. C. C.
vs.	Eastern District of Penna.
EASTON, *et al.*	April Session, 1888.
	No. 51.

And now, to wit, June 13, 1889, the City of Easton, one of the above defendants, by Aaron Goldsmith pleads "Not Guilty."

AARON GOLDSMITH,
Atty for City.

To Samuel Bell, Clerk U. S. C. C.

Endorsed: U. S. C. C., Eastern District, Pa. 51 April Session 1888. Stuart *vs.* City of Easton. Defendant's Plea. Filed June 15, 1889.

(8) And thereupon afterwards, to wit, on the fifteenth day of March, A. D. 1889 the defendant, the County of Northampton by its Attorney H. S. Cavanaugh, Esq., comes into Court here and files its plea as follows, to wit:

STUART	U. S. C. C. Eastern Dist. Penna.
vs.	April Session 1888.
EASTON, *et al.*	No. 51.

And now, to wit, March 14, 1889, the County of Northampton, one of the above defendants, by H. S. Cavanaugh, Esq., pleads "Not Guilty."

H. S. CAVANAUGH,
Attorney for the County of Northampton.

To Samuel Bell, Clerk C. C. U. S.

Endorsed: C. C. U. S. East. Dist. of Pa. 51 April Session 1888. Stuart *vs.* Easton. Pleas of Northampton Co. Filed March 15, 1889. Cavanaugh.

WM. STUART *vs.* CITY OF EASTON AND COUNTY OF NORTHAMPTON.	United States Circuit Court. Eastern District of Pennsylvania. April Sessions, 1888. No. 51.

(9)

And now, to wit, February 19, 1895, Wm. Stuart, by his attorneys C. Berkeley Taylor, A. T. Freedley, and Wm. Brooke Rawle, Esquires, moves the Court for a rule upon the defendant to amend the record so that the title of the said cause shall read as follows:

Wm. Stuart, an alien, a subject of the Queen of Great Britain *vs.* the City of Easton and County of Northampton, corporations incorporated under the laws of the State of Pennsylvania and citizens of the Eastern District of Pennsylvania, returnable on Tuesday, February 12, 1895.

C. BERKELEY TAYLOR,
Attorney for Plaintiff.

Endorsed: U. S. C. C. Eastern Dist. of Pa. April Session 1888. No. 51. Stuart *vs.* Easton. Motion to amend. Filed February 19, 1895. Samuel Bell, Clerk. C. B. Taylor, A. T. Freedley, Wm. Brooke Rawle.

WM. STUART *vs.* CITY OF EASTON AND COUNTY OF NORTHAMPTON.	United States Circuit Court. Eastern District of Pennsylvania. April Sessions, 1888. No. 51.

(10)

STATE OF PENNSYLVANIA }
CITY OF PHILADELPHIA. } *ss.*

F. F. EASTLACK, Jr., being duly sworn deposes and says that he is acquainted with Wm. Stuart, the plaintiff in the above case, that he knows him to be an alien, a subject of the Queen of Great Britain, and resident in the City of London, and further saith not.

FRANCIS F. EASTLACK, JR.

Sworn and subscribed to before me this ninth day of February, A. D. 1895.

THOS. W. HOSKINSON,
Notary Public.

[SEAL]

Endorsed: U. S. C. C. Eastern Dist. of Pa. April Sessions, 1888. No. 51. Stuart *vs.* Easton. Affidavit. Filed February 19, 1895. Samuel Bell, Clerk, C. B. Taylor, A. T. Freedley, Wm. Brooke Rawle.

(11)

WM. STUART	U. S. Circuit Court.
vs.	Eastern District of Pennsylvania.
CITY OF EASTON AND	April Sessions, 1888.
COUNTY OF NORTHAMPTON.	No. 51.

AND NOW, this 19th day of February, 1895, on motion of counsel for plaintiff, counsel for defendant having been notified and not appearing or objecting thereto, it is ordered that the title of the case be amended so as to read as follows:

Wm. Stuart, an alien, a subject of the Queen of Great Britain *vs.* the City of Easton and County of Northampton, corporations, incorporated under the laws of the State of Pennsylvania and citizens of the State of Pennsylvania," and that in the statement of all subsequent pleadings and papers whenever the words "Wm. Stuart a citizen of London, England" occur the same shall be amended so as to read "Wm. Stuart, an alien, a subject of the Queen of Great Britain," and that wherever the names of the "City of Easton and County of Northampton" occur the same shall be amended so as to read, "The City of Easton and County of Northampton, incorporations, incorporated under the laws of the State of Pennsylvania and citizens of said State of Pennsylvania."

GEO. M. DALLAS,
Circuit Judge.

Endorsed: 51 U. S. C. C. Eastern Dist. of Pa. Apl. Sessions, 1888. Stuart *vs.* Easton. Order amending record. Filed February 19, 1895. Samuel Bell, Clerk of Court. C. B. Taylor, W. Brooke Rawle, A. T. Freedley.

(12)

STUART	United States Circuit Court.
vs.	April Sessions, 1888.
EASTON.	No. 51.

And now, to wit, the third day of April, A. D. 1895, it is agreed by and between counsel in the above cause as follows:

That William Stuart, the plaintiff above named, has since the commencement of the present suit departed this life, and that his son, William Dugald Stuart, an alien and subject of the Queen of Great Britain, resident in England, has become entitled to all the rights of the said William

Stuart in Pennsylvania, and that therefore it is agreed that his name shall be substituted upon the record in the place of the said William Stuart.

It is further agreed that the said William Dugald Stuart, and William Stuart and his father William Stuart, Thomas Gordon Penn, Granville John Penn and Richard Penn, successors in estate to Richard and Thomas Penn, proprietaries of Pennsylvania since 1850, have been each and all of them aliens and subjects of the Queen of Great Britain, resident in England.

That the City of Easton and County of Northampton are corporations incorporated under the laws of the State of Pennsylvania and citizens of the said State resident in the Eastern District of Pennsylvania.

C. B. TAYLOR,
Attorney for Wm. Dugald Stuart.
H. J. STEELE,
Attorney for the City of Easton.

Endorsed: U. S. C. C., East. Dist. of Pa. No. 51. April Sess., 1888. Stuart *vs.* Easton.

Agreement as to substitution and other facts. Filed April 3, 1895. Samuel Bell, Clerk. C. B. Taylor, A. T. Freedley, Wm. B. Rawle.

And thereupon it is ordered that a jury come to try the issue joined in (13)
this case.

And afterwards, to wit, on the third day of April, A. D. 1895, a jury being called come, to wit:

Charles A. Meck,	John C. Eckles,
John C. Harlacker,	Walter Wood,
Samuel M. Fite,	Alex. J. Zellner,
Robert H. Conlyn,	M. V. B. Vanartsdalen,
Robert S. McClure,	Edward Stroh,
George W. Eaby,	William Schneider,

who are duly empaneled, returned chosen, tried, and sworn or affirmed to speak the truth, etc., in the issue joined in this case.

And afterwards, to wit, on the day and year last aforesaid, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say that they find for the defendants.

STUART	U. S. C. C. East Dist. Pa.	(14)
vs.	April Sess., 1888.	
EASTON.	No. 51.	

And now, to wit: April 4, 1895 (1895), the plaintiff by his attorneys moves for a new trial in the above cause and assigns the following reasons:

1. Because the Court took the case away from the Jury.
2. Because the Court directed a verdict for the defendant.
3. Because the Court did not direct a verdict for the plaintiff.

4. Because the verdict was against the law.

5. Because the verdict was against the evidence.

C. BURKELEY TAYLOR,
Attorney for Plaintiff.

Endorsed:—51. U. S. C. C. East. Dist. Pa. April Sess., 1888. Stuart *vs.* Easton.

Motion and reasons for a new trial. Filed April 6, 1895.

SAMUEL BELL,
Clerk.

(15

C. B. TAYLOR.

And afterwards, to wit, on the sixth day of April, A. D. 1895, came the parties aforesaid, by their attorneys aforesaid, and this cause being called for argument on a motion for a new trial, and having been argued by counsel for the respective parties, and the court being fully advised in the premises, it is ordered that the motion for a new trial be and the same is hereby denied and judgment ordered to be entered on the verdict in favor of defendants and against the plaintiff.

Whereupon judgment is entered accordingly.

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(16) IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

April Sessions, 1888, No. 51.

WILLIAM DUGALD STUART, an alien, a subject of the Queen of Great Britain, residing in London,

vs.

THE CITY OF EASTON AND COUNTY OF NORTHAMPTON, corporations incorporated under the laws of the State of Pennsylvania and citizens of said State, residing in the Eastern District of Pennsylvania.

BE IT REMEMBERED, that in the term of Aprill, A. D. 1895, came the said plaintiff into the said Court, and impleaded the said defendants in a certain plea of ejectment, etc., in which the said plaintiff declared (prout Narr) and the said defendant pleaded (prout pleas), and thereupon issue was joined between them.

And afterwards, to wit, at the sessions of said Court held at the City of Philadelphia aforesaid before the Honorable Dallas, Judge of the said Court, on Wednesday and Thursday, the third and fourth days of April, A. D. 1895, the aforesaid issue between the said parties came to be tried by a jury of the said District duly impanneled (prout list of jurors), on which day came as well the said plaintiff as the said defendants by their respective attorneys and jurors of the jury aforesaid impanneled to try the said issue, and also called, came, and were then and there in due

manner chosen and sworn or affirmed, to try the said issue, and upon the trial the counsel of the said plaintiff offered the following, to wit:

Plaintiff's counsel offers in evidence from Dallas' Laws, First Volume, (17) an Act of Assembly of 1752, creating and erecting the County of Northampton at that time; that is, such sections of it as affect this case, as follows:

"Whereas, a great number of the inhabitants of the upper parts of the County of Bucks, by their petition, have humbly presented to the Governor and Assembly of this Province, the great hardships they lay under by being so remote from the present seat of judicature and the public offices and the necessary means to be used for obtaining justice is attended with so much difficulty and expense, and many forego their right rather than attempt the recovery of it under such circumstance, while others, sensible of their difficulties, commit great violence with impunity. For remedying whereof and for the relief of the inhabitants: Be it Enacted, that all and singular the lands lying within the Province of Pennsylvania aforesaid be erected into a County, and the same is hereby erected into a County, named and henceforth to be called Northampton, to be divided from the County of Bucks by the upper or northward line of Durham Tract, to the upper corner thereof, then from a straight line to be run southwestwardly to the line dividing the townships of Upper and Lower Milford, then along the said line to the line dividing Philadelphia and Bucks Counties, and then by that line to the extremity of the said Province."

Also, the Sixth Clause, as follows: "And be it further enacted that it shall and may be lawful to and for Thomas Craig, Hugh Wilson, John Jones, Thomas Armstrong and James Martin, or any three of them, to purchase and take assurance to them and their heirs, of a piece of land situated in some convenient place in the said town, in trust and for the use of the inhabitants of the said County, and | thereon to erect a building, (18) a Court house and prison sufficient to accommodate the public service of the said County, and for the ease and convenience of the inhabitants."

Also a copy of the Act of 1763, not published, the copy being a certified copy from the Land Office, which is offered under an agreement in the case. Exhibit No. 1.

Also, the warrant for the deeds of the Court House lot. Exhibit No. 2.

Also, the survey which followed that warrant. Exhibit No. 3.

Also, the Patent to the Trustees for this lot. Exhibit No. 4.

Also, the pedigree that has been agreed to by counsel, with the agreement filed in this case, to show that the present plaintiff is the proper plaintiff in the case as the representative of Thomas and Richard Penn. Exhibit No. 5.

Also, an agreement entered into by counsel in this case, as to certain of the facts, and in which the admissibility of these facts and their relevancy are still to the Court to determine. Exhibit No. 6.

Plaintiff's counsel offers in evidence an Act of Assembly of 1780,

Dallas' Laws, as to the vesting of the various Court House properties in the State of Pennsylvania, so much of it as reads as follows:

"And all and singular the Court Houses, goals, prisons and work houses, together with the lots of land whereon they severally stand, or which are appurtenant to them, of and in the several Counties of this State, as they are now or heretofore have been vested in any feoffees or trustees, or in any bodies politic and corporate for the several use of the said Counties respectively: and also all other real estate to the good people of this Commonwealth, or of any County thereof, in their public
(19) and collective | capacity belonging, or to their use or interest vested and conveyed, shall be, and hereby are, vested in the Commonwealth, freed and discharged, and absolutely acquitted, exempted and exonerated of, from and against all claims and demands of the said feoffees or trustees, or bodies politic and corporate, or of the survivors and survivor of such feoffees and trustees, and every of them, and of the heirs of such survivors and survivor forever; subject however to the several uses, intents, trusts, dispositions and direction, for which the same have been heretofore respectively appointed and limited, and to none other; saving and always reserving to every person and persons, bodies politic and corporate, his and their heirs, successors, other than the said feoffees and trustees, all such estates, right, title and interest, of, into and out of the premises vested in trust as aforesaid, as they, every or any of them, had before the passing of this Act, or could or might have had or enjoyed, in case this Act had not been made or passed."

Also, section 9, of the Act of the 15th day of April, 1834, as follows:

"The titles to all and singular the Court Houses, jails, prisons and work houses, together with the lots of land thereunto belonging or appertaining, in the several Counties of this State, as they are now, or heretofore have been, vested in any feoffees or trustees, or in the Commonwealth, or in the Commissioners of the respective Counties, or in any bodies politic or corporate, for the several use of the said Counties respectively, shall be, and they are hereby declared to be, vested in the respective Counties for the use of the people thereof, and for no other use."

Also, the survey of 1,000 acres of land, with the allowance, six per cent., surveyed October 8th, 1736, being a copy from the Land Office
(20) marked No. 47, showing a survey of the tract of land | upon which the town of Easton lay. This for the purpose of showing that the property on which the town of Easton lay was surveyed by the proprietaries and the survey filed in the Land Office prior to the Divesting Act: (Exhibit No. 7.) and an extract from the book of proprietary rights in the Land Office, showing that No. 47 was the 1,000 acres reserved by the proprietaries themselves. (Exhibit No. 8.)

Counsel for the defendants object to the offer for the reason that the Divestitory Act reserved only to the proprietaries such lands as were surveyed and returned into the land office prior to July 4, 1776, and the paper which is offered in evidence does not show that it was made in pursuance of any warrant for a survey issued by the proprietaries, nor does

the paper show proper return to such warrant as having been made by any authorized person whatever on behalf of the proprietaries.

Offer admitted in evidence. To which ruling counsel for defendants excepts.

Also, a properly certified plan of the town of Easton, being numbered 112. (Exhibit No. 9.)

Also, a certificate from the book of proprietary rights, showing the page upon which No. 112, of the plan of Easton, is entered. (Exhibit No. 10.)

Also, certified copy of the deed referred to in the Acts of 1752 and 1763, for the prison lot of land, showing the grant. Offered to show the grant of just such an estate granted in this case, to be followed by a subsequent grant and the reversion by Penn to the county; the two papers to be used as an estoppel, as evidence of an estoppel upon the county from setting up that this is not an estate upon condition. (Exhibit No. 11.)

Defendants' counsel objects.

Offer excluded. To which ruling the plaintiff's counsel excepts. (21)

Also, the deed by Granville John Penn and Richard Penn to the County of Northampton, dated in 1852, for the reversion in the prison lot. Offered for two purposes; first, for the former purpose of establishing and using with the jury to show an estoppel upon the county; and second, to show grants by Penn of land in the township of Easton subsequent to the Divesting Act; to be followed by other deeds made by Penn subsequent to the Divesting Act. (Exhibit No. 12.)

Defendants' counsel objects to the offer as being incompetent and entirely irrelevant.

Offer excluded. To which ruling counsel for plaintiff excepts.

Also, a deed by John Penn to Peter Schuyler, *et al.*, for a lot in the County of Easton, subsequent to the Divesting Act. (Exhibit No. 13.)

Defendants' counsel objects to the offer for the same reason.

Offer excluded. To which ruling plaintiff's counsel excepts.

Also, a certified copy from the books of the land office, showing that the records of the Department of Internal Affairs of Pennsylvania show a number of warrants issued for lots in the town of Easton, Pa., and surveys made in pursuance thereof, and lots granted by the proprietaries of the Province of Pennsylvania.

Second. That no evidence can be found to indicate that any warrants were issued, and surveys made or patents granted by the Commonwealth of Pennsylvania, for any lots in the town of Easton, Pa. (Exhibit No. 14.)

Defendants' counsel objects to the offer.

Offer excluded. To which ruling plaintiff's counsel excepts.

Also, agreement of counsel filed this day suggesting the death of (22)
William Stuart and substituting William Dugald Stuart, an alien, subject of the Queen of Great Britain, resident in England as plaintiff, and

agreeing that he is such an alien and that his predecessors in title were also aliens as far back as 1850, and that the City of Easton and County of Northampton are citizens of Pennsylvania residing in the eastern district thereof. (Exhibit No. 15.)

Plaintiff rests.

Adjourned until Thursday, April 4, 1895, at 10 o'clock A. M.

Defendants counsel asks the Court to direct a verdict in favor of the defendants.

Charge of the Court, Dallas, *J.*

GENTLEMEN OF THE JURY:—This case was tried some years ago and an appeal taken to the Supreme Court of the United States, which reversed the judgment then entered for a technical reason, which has since been cured: under the circumstances I think it wise to read to you the charge delivered by the Court at the last trial, as follows:

(23) This is an action brought to recover possession of a piece of land in the City of Easton, Pennsylvania, belonging originally to William and Richard Penn, and the plaintiff here claims as a descendant.

The land was conveyed many years ago to certain trustees named in deed for the erection of a court house for public use and service in Northampton county, and for no other use, intent, or purpose.

The right of the plaintiff to recover here depends upon the effect of that deed, and the defendants now asks the Court in view of all the evidence introduced by the plaintiff to say that he has failed to make out his claim and that he is not entitled to this property. It does seem to me that on the face of this deed to these trustees it was not for their own use and benefit but for the use and benefit of the people of Northampton county in the erection and use of public buildings. It is therefore a trust, it seems to me, and the plaintiff has no interest in this question whatever.

If this land has been diverted to any other purpose than the one named in the deed it does not effect his interest in any way but effects only those for whose use the conveyance was made, and he has therefore no right to maintain any action of ejectment for the recovery of this land on the ground that it was not conveyed irrevocably by the deed from the Penns.

I therefore instruct you that such is the effect of the conveyance and the plaintiff is not entitled to maintain this action and your verdict should therefore be for the defendant.

Counsel for plaintiff excepts to the binding instruction to the Jury to find for the defendant and the exception is thereupon noted.

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(24) [L. S.] EXHIBIT No. 1.

JAMES HAMILTON.

An Act to enable certain persons therein named to erect a court house at Easton in the County of Northampton, and to levy a tax on the inhabitants of the said County to defray the expense thereof.

WHEREAS. By an Act passed in the twenty-first year of the reign of the late King George the Second, entitled "An Act for erecting the northwest part of Bucks into a separate County" it was enacted that Thomas Craig, Hugh Wilson, John Jones, Thomas Armstrong and James Martin, or any three of them should purchase and take assurance to them and their heirs of a piece of land situated in some convenient place of the Town of Easton within the County of Northampton in trust and for the use of the inhabitants of the said County and thereon to erect and build a court house and prison sufficient to accommodate the public service of the said County and for the ease and convenience of the inhabitants, and that for the defraying the charges of purchasing the land, building and erecting the court house and prison aforesaid, it should be lawful for the commissioners and Assessors of the said County or a majority of them to assess and levy so much money as the said trustees or any three of them should judge necessary for purchasing the land and finishing the said Court-house and prison, provided the sum of money so to be used raised did not exceed three hundred pounds current money of this Province.

AND WHEREAS, the said trustees have already raised and expanded | (25)
the sum of three hundred pounds and upwards in building a prison in the town of Easton in pursuance of the act hereinbefore mentioned and as no other provision is made by the said act for raising any further sums of money for the purpose aforesaid whereby the good purposes of the said act may be defeated.

FOR REMEDY WHEREOF, BE IT ENACTED by the Honorable James Hamilton, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and Counties of New Castle, Kent, and Sussex, upon Delaware, by and with the advice of the Representatives of the Freemen of this province in General Assembly met and by the authority of the same, that it shall and may be lawful for the Commissioners and Assessors of the said County of Northampton or a majority of them, to assess and levy and they are hereby authorized and required to assess and levy so much money of the said County as John Jones, Thomas Armstrong, James Martin, John Rinker and Henry Allshouse Gentlemen, or any three of them, shall judge necessary for building a court house and finishing the prison already erected, provided the sum so raised shall not exceed the sum of four hundred and fifty pounds current money of this Province anything in this Act or in the Act hereinbefore mentioned to the contrary notwithstanding.

Signed by the order of the House,

ISAAC NORRIS,
Speaker.

Passed by the Governor the fourth day of March in the third year of his Majesty's reign, Annoque Domini one thousand seven hundred and sixty-three.

By His Honour's Command,

JOSEPH SHIPPEN, JR.,
Secretary.

(26) OFFICE OF THE SECRETARY OF THE COMMONWEALTH.

Harrisburg, September 28th, A. D. 1889.

PENNSYLVANIA, *ss:*

I DO HEREBY CERTIFY, That the foregoing and annexed is a full, true and correct copy of the original Act of the General Assembly, of the Province of Pennsylvania entitled "An Act to enable certain persons therein named to erect a Court House at Easton in the County of Northampton and to levy a tax on the inhabitants of the said County to defray the expense thereof," as the same remains on file in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Secretary's Office to be affixed the day and year above written.

J. H.,

Deputy Secretary of the Commonwealth.

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(27) EXHIBIT No. 2.

PENNSYLVANIA, *ss.*

By the Proprietaries.

WHEREAS, in and by an act of General Assembly of this Province, intitled "An Act of erecting the Northwest part of Bucks into a separate County" which in and by the said act is called Northampton and Thomas Craige, Hugh Wilson, John Jones, Thomas Armstrong and James Martin, or any three of them, were appointed Trustees to purchase and take assurance to them and their heirs of a piece of land situate in some convenient place in the Town of Easton in the said County, and thereon to erect and build a Court-House and Prison sufficient to accommodate the public service of the said County, and for the ease and convenience of the inhabitants, as in and by the said act appears. And Whereas on application and request of said Trustees, and out of our regard to encourage and promote the Improvement of the said Town, and general good and convenience of the inhabitants of the said County, we have condescended and agreed to grant to the said trustees a lot or piece of ground of Eighty Feet square to be laid out in the centre of the great square in the middle of the said Town of Easton, for a Court House for the use and the accommodation of the inhabitants of the said town and County forever: These are therefore to require you to survey and lay out or cause to be surveyed and laid out, a lot or piece of ground in the centre of the great Square in the said Town of Easton of the said dimensions of Eighty feet square for the public use of a court house for the inhabitants of the said town and county, and make return thereof into our Secretarys Office in order for confirmation to the said Trustees and their heirs for the use aforesaid, and for your so doing this shall be your sufficient Warrant:

Given under my hand and the seal of the Land Office, by virtue of certain powers from the said Proprietaries at Philadelphia the ninth day of July 1762.

To JOHN LUKENS,
Surveyor General. JAMES HAMILTON.

IN TESTIMONY, That the above is a copy of the original remaining on file in the Department of Internal Affairs of Pennsylvania, I have hereunto set my hand and caused the seal of the said Department to be affixed at Harrisburg, this Twenty-seventh day of September, A. D. 1889.

[SEAL] ISAAC B. BROWN.

Deputy Secretary of Interna Affairs.

EXHIBIT No. 3. (29)

In pursuance of a Warrant dated the 9th. day of July 1762. Surveyed the 8th. day of October 1763 to Thomas Craig and others the above described Lot of Ground Situate in the Public Square of the Town of Easton in the County of Northampton. Containing in length North & South eighty feet and in breadth East & West eighty feet.

P. JAMES SCULL.

IN TESTIMONY, That the above is a copy of the original remaining on file in the Department of Internal Affairs of Pennsylvania, I have here-

unto set my hand and caused the seal of the said Department to be affixed, at Harrisburg, the first day of October, 1889.

[SEAL] ISAAC B. BROWN,
Deputy Secretary of Internal Affairs.

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(30) EXHIBIT No. 4.

Patent to John Jones
& ors Trustees &c.

Thomas Penn & Richard Penn Esquires true and absolute Proprietaries and Governors in Chief of the Province of Pennsylvania & Counties of Newcastle Kent and Sussex upon Delaware To all unto whom these Presents shall come Greeting Whereas in and by an Act of General Assembly of the said Province passed in the twenty fifth year of the Reign of our late Sovereign Lord the Second Intituled "An Act for Erecting the North West part of Bucks into a separate County" which in and by the said Act is called Northampton and John Jones Thomas Armstrong James Martin John Rinker and Henry Allshouse or any of them are appointed Trustees to purchase and take Assurance to them and their Heirs of a Piece of Land situate in some convenient Place in the Town of Easton in the said County and thereon to erect and build a Court House & Prison sufficient to accomodate the public Service of the said County as by the said Act appears And whereas in Pursuance of a Warrant dated the ninth of July 1762 under the Seal of our Land Office we have at the special Instance & Request of the said Trustees caused a Lot of Ground situate in the Center of the said Town of Easton to be laid out for a Court House for the Public Use and Service of the said County (an other Lot of Ground in the said Town having been heretofore laid out for a Prison or Common Goal erected thereon) which said lot in the Center Square contains in Length North and South eighty feet and in Breadth East and West eighty feet As by the said Warrant and Survey of the said Lot remaining in the Surveyor Generals Office and from thence Certified into our Secretarys Office more fully appears Now know ye that for the further Encouragement and better promoting the Public Benefit and Service of the said Town and County And for and in Consideration of the yearly Quitrent herein after re-
(31) served | and of the Sum of Five Shillings to us in Hand paid by the said Trustees (The Receipt whereof is hereby acknowledged) We have given granted released and confirmed & by these Presents do give grant release and confirm unto the said Trustees John Jones Thomas Armstrong James Martin John Rinker and Henry Allshouse and their Heirs the said Lot of Ground situate in the Center of the Great Square in the said Town of Easton containing eighty feet in Length North & South and eighty feet in Breadth East and West Together with all Ways Waters Watercourses Liberties Easements Privileges Profits Commodities Advantages and Appurtenances thereunto belonging And the Reversions and Remainders thereof To have and to hold the said herein

before described Lot of Ground with the Appurtenances unto the said John Jones Thomas Armstrong James Martin John Rinker and Henry Allshouse their Heirs and Assigns for ever In Trust nevertheless to and for the Erecting thereon a Court House for the public Use and Service of the said County and to and for no other Use Intent or Purpose whatsoever To be holden of us our Heirs and Successors Proprietaries of Pennsylvania as of our Manor of Fermor in the County of Northampton aforesaid in free and common Soccage by Fealty only in Lieu of all other Services Yielding & Paying therefor yearly unto us, our Heirs and Successors, at the Town of Easton aforesaid at or upon the first day of March in every Year from the first day of March next one Red Rose for the same or Value thereof in Coin Current according as the Exchance shall then be between our said Province and the City of London to such Person or Persons as shall from Time to Time be appointed to receive the same And in Case of Nonpayment thereof within ninety days next after the same shall become due That then it shall and may be lawful for us our Heirs and Successors our and | their Receiver or Receivers into and (32)
upon the hereby granted Lot or Piece of Ground and Premises to Reenter and the same to hold and Possess until the said Quitrent and all arrears thereof Together with the Charges accruing by Means of such Nonpayment and Reentry be fully paid and discharged

Witness John Penn Esquire Lieutenant Governor of the said Province who by virtue of certain Powers and Authorities to him for this Purpose inter alia granted by the said Proprietaries hath hereunto set his Hand and caused the Great Seal of the said Province to be hereunto affixed at Philadelphia this twenty eighth day of September, in the Year of our Lord one thousand seven hundred and sixty four The Fourth year of the Reign of George the Third the King over Great Brittain &c And Forty seventh Year of the said Proprietaries Government

JOHN PENN [L. S.]

Recorded ye 17th Jany 1765.

In testimony that the within is a copy of a patent as recorded in Patent Book A. A. Volume 6, Page 115 remaining in the Department of Internal Affairs of Pennsylvania, I have hereunto set my hand and caused the seal of said Department to be affixed at Harrisburg this eighteenth day of February, A. D., 1888.

ISAAC B. BROWN,
Deputy Secretary of Internal Affairs.

[SEAL]

EXHIBIT No. 5.

WILLIAM STUART	U. S. Circuit Court.
vs.	Eastern Dist. of Penna.
THE CITY OF EASTON AND	April Sess., 1888.
THE COUNTY OF NORTHAMPTON.	No.

2

(33) PLAINTIFF'S TITLE.

1681. Charter. Charles II. granting and confirming the Province of Pennsylvania to William Penn and his heirs.
5 Sm. L. 406, &c.

Note.

1718.

Aug. 30. William Penn died August 30, 1718, leaving to survive him by his wife, Hannah Callowhill, four children, John, Thomas, Margaret and Richard. Hannah and Dennis had died in infancy. (Gilpin's pedigree.)

1712.

May 27. Will William Penn. Wherein he devised (*inter alia*) all his lands in Penna. to his wife Hannah Penn *et al.* in trust to appoint and convey all his residuary real estate in America to and among his children by his then wife, in such proportions and for such estate as she should think fit.

Recorded in Philadelphia
Will Book, No. 1, p. 238, &c.

1725.

Jan. 7. Deed Poll whereby Hannah Penn in pursuance and execution of above power appointed the Province of Pennsylvania the testator's residuary estate as follows:

To her son John Penn 2-4
Thomas Penn 1-4
(34) Richard Penn 1-4

Recorded at Philadelphia in
Deed Book
G. W. R. 31, page 40.

1735.

June 24. Release. Samuel Preston and James Logan surviving Trustees under above Will to

John Penn 2-4
Thomas Penn 1-4
Richard Penn 1-4 of *inter alia* their interest in said Province.

Recorded at Philadelphia in
Deed Book F. 7, page 338, &c.

1732.

May 8. Agreement between John Penn, Thomas Penn and Richard Penn to devise their shares to the eldest son in tail male remainder to other sons in like manner; and if any die without issue male his share to go to the survivor or survivors and heirs as he should appoint, and if no appointment then to survivors and their heirs male.

Enrolled in Chancery, March 21, 1750.

In evidence in Penn *vs.* Ld. Baltimore, 1 Vesey Sr. 444, Articles, Wills and Deeds creating entail of Penna. 1, &c. 10 Am. Law Register N. S. 488.

Note.

1746.

Oct. 29. John Penn in whom was vested one-half of said Province died unmarried and without issue Oct. 29, 1746.

Gilpin's Pedigree.

1746. (35)

Oct. 24. Will John Penn wherein he devised his 2-4 of Pennsylvania etc., unto his brother Thomas Penn for life with remainder to his first and other sons in tail, remainder to his brother Richard Penn for life, remainder to his first and other sons in tail male, remainder to his brother Thomas Penn in tail general; with authority to every tenant for life or in tail for the time being to grant any estate however large.

Recorded at Philadelphia,
Will Book H. page 295.

Note. Whereupon the said Thomas Penn became seized of 3-4 of said Province as above.

1750.

Jan. 31. Agreement between Thomas Penn and Richard Penn whereby *inter alia*, they made the like power of sale in fee applicable to their respective fourths.

See 2 Yeates, 553 4
Articles, Wills, &c., creating Entail
of Penna. 37, &c.
10 Am. Law Register, N. S. 489.

1750.

Mar. 20. Agreement between Thomas Penn and Richard Penn, wherein *inter alia* they agreed that each might by Will Deed, settlement or otherwise despose of his 1-4 to all his own issue female, in preference to all or any female issue of the other party.

2 Yeates, 553, 555,
Articles &c., creating Entail 60 &c.

1771. (36)

Recited. Richard Penn inter-married with Hannah daughter of Richard Lardner, M. D., and died in the year 1771, leaving to survive him 2 sons, John and Richard, and one daughter Hannah. His third son William died in his life time unmarried and without issue. 2 Yeates, 556.

1750.

Mar. 21. Will of Richard Penn wherein he devised his 1-4 of Pennsylvania &c., unto his son John Penn for life, remain-

der to his first and other son in tail male, remainder to his son Richard for life, remainder to his first and other sons in tail male, remainder to his son William for life, remainder to his first and other sons in tail male, remainder to his brother Thomas for life, remainder to his first and other sons in tail male, remainder to his sons successively in tail general, remainder to his daughter in tail male, and in tail general successively, remainder to his brother Thomas in tail general.

Duly Recorded in Prerogative Office at Burlington in Book XV of Wills Folio 357. Articles &c., creating Entail, 66. 10 Am. Law Reg. N. S. 489 &c.

As to 1-4 of Province belonging to Richard the elder.

1795. John Penn married Annie Allen, and died without issue in 1795.

Will duly proved at Philadelphia, Feb. 18, 1795. Recorded in Will Book X, 197, &c. 2 Yeates, 575.

(37) Note. Hannah Penn inter-married with James Clayton and died without issue.

Gilpin's Pedigree.
2 Yeates, 556.

Note. Whereupon said 1-4 vested in Richard Penn the younger.

Note.

1811. Richard Penn inter-married with Mary Masters and died in the year 1811, leaving issue four children Hannah, William, Richard and Mary. Admr. Book L. p. 244, at Phila.

Note. Hannah Penn died unmarried and without issue. Coleman's Pedigree, Gilpin's Pedigree. Article by Jno. Jay Smith delivered before the Hist. Soc. of Phila.

Note.

1862. Mary Penn inter-married with Samuel Paynter and died without issue in 1862.

See above Pedigrees.

Note. William Penn inter-married with Juliana Catharine and died in 1846, unmarried and without issue.

Gilpin's Pedigree.

Note. Richard Penn died April 27, 1863 without issue. Letters of Administration taken out in Philadelphia, Nov. 13, 1863. See Admr. Book L. 105, c. t. a.

Note. Whereupon the 1-4 interest in the Province vested in the descendants in tail general or Richard Penn the elder became vested in the descendants of Thomas Penn

and from this time on the whole interest of John, Thomas and | Richard Penn became vested in the (38)
descendants of Thomas Penn.

As to the various interests in the Province vested in the descendants of Thomas Penn.

Note.

1751. Thomas Penn inter-married with Lady Juliana Farmor.

1751.

Aug. 15. Marriage settlement between Thomas Penn and Lady Juliana Farmor wherein he conveyed his fourth of said Province to his own use for life, remainder to his first and other sons in tail male successively, remainder to his brother Richard for life, remainder to his first and other sons in tail male successively, remainder to the heirs of the body of him the said grantor, with power of sale in the holder of the title.

Acknowledged in Phila. July 11, 1829. Recorded July 22, 1829, in Deed Book G. W. R. No. 31, page 53, &c.

Note.

1775.

Mar. 21. Thomas Penn died March 21, 1775, leaving to survive him Juliana Penn, John Penn, Granville Penn and Sophia Margaret Penn, he had four other children who died minors | namely, William Penn, Louisa Penn, Thomas Penn and (39)
William Penn (two of the same name).

Gilpin's Pedigree.

1771.

Nov. 18. Will of Thomas Penn wherein he did devise *inter alia* as follows: "My late brother's moiety of the Province of Pennsylvania and of the three lower Counties of New Castle, Kent and Sussex upon Delaware in America being already settled in and by his last Will and Testament and my own quarter part of the same Province and the three lower Counties being by me settled in consideration of a marriage which was then intended and which hath been since had between me and my said dear wife, Lady Juliana, and some provision being already made in some cases for my widow and some of my children in and by certain family deeds of agreement entered into and executed by and between my late brothers and myself or by and between some of us I do hereby give, bequeath, devise and dispose of all the other parts of my real estate, etc."

Proved at Philadelphia, April 6, 1829, and recorded in Will Book 2, p. 154, &c.

Note. Juliana Penn inter-married with William Baker and died leaving to survive her, one daughter

Juliana Baker, who inter married with J. F. Rawlings and died without issue.

Gilpin's Pedigree.
10 Am. Law Reg. N. S. p. 491.

(40) 1834.

June 21. John Penn, called John Penn of Stoke Pogis died June 21, 1834, without issue.

See Will Book No. 11, p. 667 &c., at Phila. for his Will.
Gilpin's Pedigree.

1844.

Sep. 28. Granville Penn intermarried with Isabella, daughter of General Forbes and died September 28, 1844 leaving to survive him three sons, Granville John Penn, Thomas Gordon Penn and William Penn: he had by his wife nine children, six of whom however, died before him, to wit: Juliana Margaret who died a minor unmarried and without issue in 1804; Sophia who intermarried with William Gomm and died without issue in 1827: Louisa Emily who died unmarried and without issue in May, 1842, and Isabella Mary, Henrietta Anne and John William all of whom died minors unmarried and without issue.

Gilpin's Pedigree.
Will of Granville Penn, recorded at Phila. in Will Book No. 29, p. 384, &c.

Note. Children of Granville Penn entitled to his 3-4 interest.

Note.

1848.

Jan. 4. William Penn, son of Granville Penn died unmarried and without issue, January 4, 1848.

Gilpin's Pedigree.

Note.

1867.

Mar. 29. Granville John Penn son of Granville Penn died unmarried and without issue, March 1867. Who paid the last visit of the Penns to Penna., in June 1852.

(41) Will recorded at Philadelphia in Will Book 63, page 234 &c. Letter of administration upon his estate recorded in Adminr. Book T, page 173, &c. Gilpin's Pedigree.

Note.

1869.

Sep. 10. Thomas Gordon Penn son of Granville Penn died unmarried and without issue September 10, 1869, and with him terminated the estate tail male created under the agreements and wills of John, Thomas and Richard Penn sons of William Penn and Proprietaries of Penna.

Note. Whereupon the said Province or interest therein vested in descendants of Thomas Penn in tail general.

1847.

April. Sophia Margaret Penn, daughter of Thomas Penn intermarried with William Stuart, Archbishop of Armagh, and died in April, 1847, leaving to survive her four children

Note. William and Mary, Juliana, Henry and Louisa.

Gilpin's Pedigree.
10 Am. Law Reg. N. S. 491.

Note.

1823. Louisa Stuart daughter of Sophia Margaret Penn died unmarried and without issue in the year 1823.

Gilpin's Pedigree.

Note.

1854.

Oct. 26. Henry Stuart, son of Sophia Margaret Penn, died unmarried and without issue, October 26, 1854.

Gilpin's Pedigree.

Note. (42)

1866.

July 11. Mary Juliana Stuart, daughter of Sophia Margaret Penn intermarried with Thomas Viscount Northland now the Earl of Ranfurly, and died July 11, 1866, leaving to survive her nine children.

Gilpin's Pedigree.

Note. Upon the death of Thomas Gordon Penn in 1869, the remainder in tail general of the estate of the Penns in Pennsylvania vested in William Stuart, oldest son of Sophia Margaret Penn daughter of Thomas Penn; the various private estates in land in Pennsylvania also vested in the said William Stuart under Act April 27, 1855, representation being only allowed as far as children of uncles and aunts and Mary Juliana had died in 1866 before the remainder was cast.

See opinion Wharton & Rawle to Penns, June 1, 1875: also Act 1855.

1870. Deed William Stuart heir in tail of John Penn the elder, John Penn the younger, Thomas Penn and Richard Penn to Levi Bull in fee for all and singular the lands, tenements and hereditaments in the State of Pennsylvania whereof the said party is or of right ought to be seized as tenant in tail. In trust to reconvey the same to the party of the first in absolute fee simple.

Acknowledged before the United States Consul General at London, Aug. 5, 1870. En-

tered on records of Court of Common Pleas Phila. County and presented in the Court September 24, 1870, recorded in Book 29, page 322. Entered at Pittsburg as above Oct. 17, 1870. Book K, Pages 2, 3, 4 & 5. Recorded at Philadelphia, Deed Book J. O. H. 98, page 309, &c.

1870.

Sep. 2. Deed Levi Bull to William Stuart in fee in pursuance of the purpose of barring the entail in Penna. Acknowledged same day. Recorded Dec. 22, 1870 in Deed Book J. O. H. No. 98, Page 311, &c.

(43)

Note.

1874.

July 7. William Stuart intermarried with Henrietta daughter of Admiral Sir Charles Pole and died July 7, 1874, leaving to survive him several children, the oldest named William.

1854. Will William Stuart wherein he devised as follows: "I give devise and bequeath all my real estate over which I have any power of disposition and all my personal estate and effects whatsoever and wheresoever to my eldest son, William Stuart, his heirs, executors, administrators and assigns absolutely."

Duly proved at London, September 26, 1874, and recorded in Philadelphia December 28, 1876, in Will Book No. 88, 367, &c.

The plaintiff in the present suit is the above mentioned William Stuart, of London, England, and has vested in him all rights of the Proprietaries of Penna. both under the entail and the Will of his father who barred it.

It is agreed between the Counsel in above cause that the facts set forth in plaintiff title are true, the legal effect to be determined by the Court. Plaintiff to produce copies if required of all papers (not certified) referred to in said title.

(Signed) H. S. CAVANAUGH,
Attorney for Comm's of Northampton County.

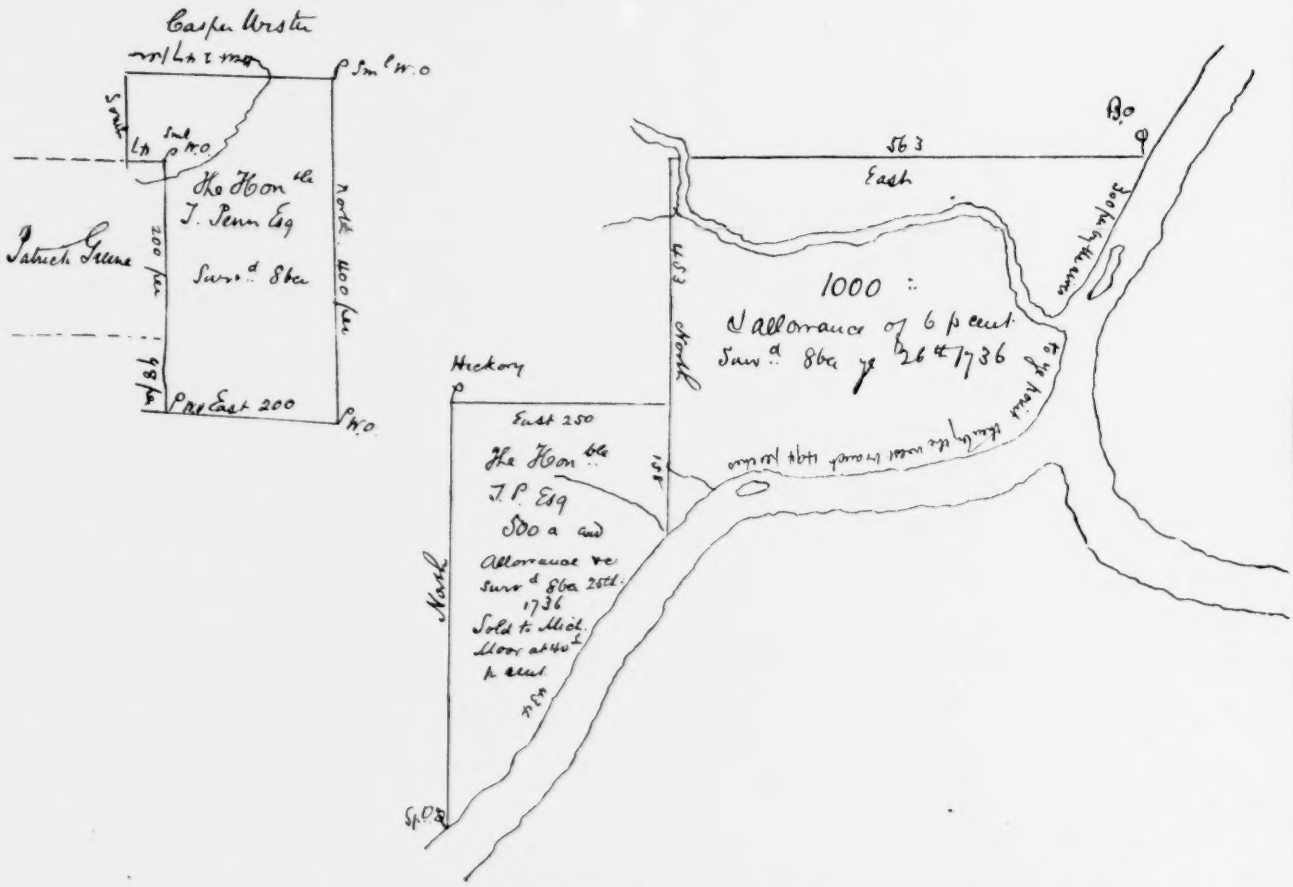
(44)

(Signed) AARON GOLDSMITH,
Atty for the City.

(Signed) C. B. TAYLOR,
Atty for Plaintiff.

FOLDOUTS TOO LARGE TO BE FILMED

EXHIBIT No. 7.



IN TESTIMONY, That the above is a copy of the original remaining on file in the Department of Internal Affairs of Pennsylvania, I have hereunto set my hand and caused the seal of the said Department to be affixed, at Harrisburg, the twenty-third day of September, 1889.

[SEAL]

ISAAC B. BROWN,
Deputy Secretary of Internal Affairs.

EXHIBIT No. 6. (46)

STUART	(	U. S. C. C. East. Dist. Pa.
vs.		April Sess., 1888.
EASTON.	(	No. 51.

And now to wit October 7th, 1889, it is agreed by and between Counsel in the above cause that the following facts are true, the admissibility as evidence and the legal affect thereof to be determined by the Court, to wit:

1. That the property the subject of the above suit is of greater value than $5,000.

2. That the Northampton County Court House was erected upon said property between the years 1763 and 1766 and remained upon the lot from that time until 1862 in which year it was removed and no other buildings have been erected thereon since.

3. That upon July 25, 1888 at 11 o'clock A. M. in the presence of H. S. Cavanaugh, Attorney for the County Commissioners of Northampton County, C. N. Andrews, Aaron Goldsmith, City Solicitor of the City of Easton, Chas. F. Chidsey, Mayor of said City and Geo. D. Morrel; C. B. Taylor Attorney for the present Plaintiff entered upon the above property and took possession of the said lot for the Plaintiff as heir and successor to Thomas and Richard Penn former Proprietaries of Pennsylvania, for the breach of the condition under which the lot had been granted by Patent from them dated Sept. 28, 1763, recorded July 17, 1765 in Patent Book A. A. Vol. 6 P. 115 and to revest the land in him as of the Original estate of said Patentors. And that thereupon the Representatives of the County of Northampton and the City of Easton the defts. here jointly outsed the said C. B. Taylor.

4. That the Letter Books of the Penns at the Historical Society in Phila.: containing letters, and instructions to commissioners and | surveyors as to laying out the Town of Easton be admitted. (47)

C. B. TAYLOR,	H. J. STEELE,	H. S. CAVANAUGH,
Atty. for Plff.	*Solicitor for City of Easton.*	*Atty. for Co. of Northampton.*

(49) EXHIBIT No. 8.

Among the Records and Proceedings of the Department of Internal Affairs of Pennsylvania, *inter alia*, it is thus contained:

x x x x x x x x x x x x x x x x x x x x

47 { Honble. Tho. Penn Esq., Dft. of 1000[a] & 500[a] in the Forks of Delawe. in the handwriting of Benjamin Eastburn Also another Tract & not mentioned.

x x x x x x x x x x x x x x x x x x x x

In Testimony, That the above is an extract from the book of Proprietary Rights of Northampton County recorded on page No. 91 remaining on file in the Department of Internal Affairs of Pennsylvania, I have hereunto set my hand and caused the seal of said Department to be affixed, at Harrisburg, this Twenty-seventh day of September A. D. 1889.

(SEAL.)

ISAAC B. BROWN,
Deputy Secretary of Internal Affairs.

FOLDOUTS TOO LARGE TO BE FILMED

EXHIBIT No. 10. (51)

No.	102	Proprietaries	535^{a}. Draft on Del. R. below the Foul rife.
	103	Joseph Owns	Mem^{r} of a lease agreed to be given him of 500 of land at Shehocking.
	104	Henry Roan Junr	80^{a} 72^{ps} Dft. part of an appropd. Tract of the Honble. Thos. Penn, Esq.
	105	Henry Kramer	91^{a} 15^{p} Dft. part of Ditto.
	106	Conard Fox	110: 132 Dft. part of Ditto.
	107	Sebastian Unangst	83^{a} 153^{ps} Dft. pt. Ditto.
	108	Ditto	59, 1 1/2^{a} Dft. . . Do.
	109	John Devalt	84^{a} 27^{p} Dft. . . . . Do.
	110	Jno. Anderson	67^{a} 95^{p} Dft. part of Props. Dry land No. 193 in Sculls GenL. Dft.
	111	Lewis Gordon, Esq.,	210^{a} 107^{ps} part of ditto no. 194.
	112	Plan of Easton.	
	113	Ditto.	
	114	Ditto.	

In Testimony, That the above is a copy of page (101) one hundred and one of a book designated as "Proprietary Rights" remaining on file in the Department of Internal Affairs of Pennsylvania. I have hereunto set my hand and caused the seal of said Department to be affixed, at Harrisburg, this Fifth day of October A. D. 1889.

(SEAL.)

THOS. J. STEWART,
Secretary of Internal Affairs.

EXHIBIT No. 11. (52)

Thomas Penn & Richard Penn, Esquires true and absolute Proprietaries and Governors in Chief of the Province of Pennsylvania, and Counties of Nescastle, Kent & Sussex on Delaware.

To all unto whom these presents shall come greeting:

Whereas, In and by an Act of General Assembly of this Province Intitled An act for erecting the North West part of Bucks into a separate County which in and by the said Act is called Northampton Thomas Craig, High Wilson, John Jones, Thomas Armstrong and James Martin or any three of them were appointed trustees to purchase and take assurance to them and their heirs of a piece of land situate in some convenient place in the Town of Easton in the said County In trust and for the use of the inhabitants of the said County and thereon to erect and

build a Court House and Prison sufficient to accommodate the public service of the said County and for the ease and convenience of the inhabitants as in and by the said Act appears. AND WHEREAS On the application and request of the said Trustees and out of our regard to encourage and promote the Improvement of the said Town and general good and convenience of the inhabitants of the said County we have condescended and agreed to grant unto the said Trustees a lot or piece of ground (No. 96) in the said Town for a prison of the dimensions of two hundred and forty feet in length by sixty in breadth Bounded Northward by a twenty feet alley Eastward by another twenty feet alley Southward by lot number ninety-eight and Westward with Pomfret street. AND WHEREAS We did issue our warrant bearing date 9th day of July last under the seal of our Land Office requiring our surveyor General to make return of the said lot into our Secretarys Governor in order for confirmation to the said trustees for the public use aforesaid which hath been accordingly done as by the said warrant & Survey remaining in the
(53) Surveyor General's Office and from thence certified into | our Secretaries Office more fully appears Now know ye that for and in consideration of the sum of five shillings to our use paid by the said Trustees (the receipt whereof is hereby acknowledge) and of the yearly quitrent hereinafter mentioned and reserved We have given, granted, released and confirmed and by these presents for us our Heirs and successors Do give grant release and confirm unto them the said Thomas Craig, Hugh Wilson, John Jones, Thomas Armstrong and James Martin their heirs and assigns the said lot or piece of ground as the same is hereinbefore mentioned With all ways waters watercourses Easements Improvements and all other rights liberties Privileges Advantages Hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining. To have and to hold the said lot or piece of ground and premises thereby granted with the appurtenances unto the said Thomas Craig, Hugh Wilson, John Jones, Thomas Armstrong and James Martinand their Heirs and Assigns. To the only use and behoof of them the said Thomas Craig, Hugh Wilson, John Jones, Thomas Armstrong and James Martin their heirs and assigns forever. In trust and for the use of the inhabitants of the said County and thereon to erect an common Goal or Prison sufficient to accommodate the public service of the said County and to and for no other use whatsoever. To be holden of us our heirs and successors Proprietaries of Pennsylvania as of our Manor of Fernot in the County of Northampton aforesaid in free and common socage by fealty only in lieu of all other services. Yielding and paying therefor yearly unto us our heirs and successors at the Town of Easton in the said County at or upon the first day of March in every year from the first day of March last One Red Rose to such person or persons as shall from time to time be appointed to receive the same. Witness James Hamilton, Esquire Lieutenant Gover-
(54) nor of the said Province who by virtue of certain power and | authorities to him for this purpose (inter alia) granted by the said Proprietaries hath hereunto set his hand and caused the Great Seal of the said Province to be hereunto affixed at Philadelphia this Eighteenth day of January in the year of Our Lord one thousand seven hundred and sixty-three. The

third year of the reign of King George the Third over Great Britian &c. And the forty-fifth year of the said Proprietaries Government.

JAMES HAMILTON. (L. S.)

Recorded ye 10th February 1763.

In Testimony, That the forgoing is a copy of a Patent as recorded in Patent Book "A. A." No. 4 Page 220 remaining in the Department of Internal Affairs of Pennsylvania, I have hereunto set my hand and caused the Seal of said Department to be affixed at Harrisburg, this Second day of October A. D. 1889.

[SEAL.]

ISAAC B. BROWN,
Deputy Secretary of Internal Affairs.

EXHIBIT No. 12. (55)

Deed.

Granville John Penn
& Richard Penn
to
County of Northampton.

This Indenture made the twenty-fourth day of September in the Year of our Lord one thousand eight hundred and fifty two Between Granville John Penn of Stoke Park in the Parrish of Stoke Pages in the County of Bucks in England Esquire by his Attorney George Cadwallader of the city of Philadelphia Esquire by letter of Attorney duly constituted which Letter of Attorney is dated the eighteenth day of September in the year of Our Lord One thousand eight hundred and forty-six recorded at Easton in the County of Northampton In Letter of Attorney Book No. Page And Richard Penn (3) of Whitehall in the city of Westminster in England Esquire by his Attorney Benjamin Rush of the City of Philadelphia Esquire by Letter of Attorney duly constituted which Letter of Attorney is dated the twelfth day of December in the year of Our Lord One thousand Eight hundred and fifty and recorded at Easton aforesaid in Letter of Attorney Book No. Page of the one part and the County of Northampton in the Commonwealth of Pennsylvania of the other part Whereas Thomas Penn and Richard Penn late Proprietaries and Governors in chief of the Province of Pennsylvania by James Hamilton Lieutenant Governor of the said Province by them duly constituted for that purpose did by Patent under the Great Seal dated the eighteenth day of January in the year of Our Lord one thousand seven hundred and sixty-three and recorded in the City of Philadelphia in Patent Book A.A. Vol. 4 P 220 &c. Grant and convey unto | Thomas Craig, Hugh Wilson, John Jones, Thomas Armstrong (56) and James Martin Trustees appointed by Act of Assembly to purchase and take assurance to them and their heirs of a piece of land situate in some convenient place in the Town of Easton in the County of Northampton aforesaid, and thereon to erect and build a Court House and

Prison sufficient to accommodate the public service of the said County a lot or piece of ground (96) in the said Town for a Prison of the dimensions of two hundred and forty feet in length by sixty feet in breadth bounded northward by a twenty feet wide alley Eastward by another twenty feet wide alley southward by lot No. 98 and Westward with Pomfret Street In trust and for the use of the inhabitants of the said County and thereon to erect a common goal or Prison sufficient to accommodate the public service of the County and to and for no other use whatsoever AND WHEREAS the said County of Northampton is desirous of becoming the owners of the said lot of ground with the appurtenances in fee simple to be by them occupied and enjoyed for all and every purpose whatsoever they may deem proper and at pleasure to sell and convey the same free and clear from all and every restriction incumbrance and estate whatever NOW THIS INDENTURE WITNESSETH THAT THE SAID Granville John Penn and Richard Penn in whom the reversionary estate in the said lot of ground by force and in virtue of divers devises and conveyances in the law duly had and executed is now vested for and in consideration of the sum of five hundred dollars to them in hand paid by the said County of Northampton the receipt whereof is hereby acknowledged and the said County of Northampton forever thereof and discharged by these presents have granted bargained sold enfeoffed released and confirmed and by these presents do grant bargain sell enfeoffed release and confirm unto the said The County of Northampton their
(57) successors and assigns all right title interest estate property | claim and demand whatsoever which they the said Granville John Penn and Richard Penn or either of them their or either of their heirs executors or administrators have or might have of in to or out of the said described lot or piece of ground with the appurtenances To Have AND To HOLD the same unto the said County of Northampton their successors and assigns to and for the only proper use benefit and behoof of the said County of Northampton their successors and assigns forever In Witness whereof the said Parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

Sealed and delivered in the presence of
John Thompson &
David F. Foley

Granville John Penn [SEAL]
by his attorney
Geo. Cadwallader [SEAL]
Richard Penn [SEAL]
by his attorney
Benj. Rush [SEAL]

Received on the day of the date of the above written Indenture of and from the above named The County of Northampton the sum of five hundred dollars in full of the consideration before mentioned.

Geo. Cadwallader Attorney for
Granville John Penn

Benj. Rush Attorney for
Richard Penn.

On the 25th day of September A.D. 1852 before me the subscriber and alderman in and for the City of Philadelphia personally appeared George Cadwallader in the foregoing indenture named and in due form of law acknowledged the same to be his own act and deed as well as the act and deed of his constituent the said Granville John Penn and desired the same to be taken and recorded as such according to law. Witness my hand and Seal John Thompson Ald. [SEAL]

On the 25th day of September A D. 1852 before me the subscriber (58)
and Alderman in and for the City of Philadelphia personally appeared Benjamin Rush in the foregoing Indenture named and in Due form of law acknowledged the same to be his act and deed as well as well as the act and deed of his said Constituent the said Richard Penn and desired the same might be taken and recorded as such according to law. Witness my hand seal

JOHN THOMPSON Ald. [SEAL]

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF NORTHAMPTON } ss

I GEORGE R. HESS Recorder of Deeds &c. in and for the said County aforesaid do hereby certify that the above and foregoing is a true and correct copy of the Deed Recorded in Deed Book F. Vol. 8 Page 226 &c. so full and entire as the same remains of record in my said Office IN TESTIMONY, where I have hereunto set my hand and affixed the seal of my said office at Easton this second day of October A. D. 1889.

GEORGE R. HESS
Recorder

per SAM. S. YOHE [SEAL]
Deputy

EXHIBIT No. 13. (59)

DEED

MESSR. PENN
To
PETER SCHNYDER *et al*

This Indenture made the twenty-third day of June in the year of Our Lord One thousand eight hundred and two BETWEEN the Honorable John Penn of stoke Pages in the County of Bucks in the Kingdom of Great Britain Esquire one of the late Proprietaries of Pennsylvania and of the three lower counties of Nescastle, Kent and Sussex now the Delaware state and the Honorable Richard Penn of Queen Ann Street West in the

Parrish of St. Mary le Bone in the County of Middlesex in the Kingdom of Great Britian aforesaid Esquire brother of the 1st John Penn who was the other of the late Proprietaries of Pennsylvania and of the three lower Counties now state of Delaware aforesaid by John R. Coates of the City of Philadelphia in the State of Pennsylvania Esquire their Attorney duly constituted and authorized by Letter of Attorney under the hands and Seals of the said John Penn and Richard Penn legally executed bearing date 27th day of November 1800 intended to be recorded of the one part AND Peter Snyder, Nicholas Droxell and Nicholas Kern of the Town of Easton Trustees for the German Reformed Congregation in and near the Town of Easton aforesaid and Jacob Weygandt William Roup and Conard Bettenbender of the said Town of Easton Trustees of the German Lutheran Congregation in and near the Town of Easton aforesaid of the other part.

WITNESSETH THAT the said John Penn and Richard Penn by their said Attorney for and in consideration of the sum of Ten dollars lawful money of the United States unto the said Jacob R. Coates for the
(60) use | of his constituents by the said parties of the second part well and truly paid at the execution hereof the receipt whereof is hereby acknowledged have granted bargained and sold aliened released and confirmed and by these presents grant bargain and sell release and confirm unto the said Peter Schnyder Nicholas Droxell and Nicholas Kern Jacob Waygandt William Roup and Conard Bittenbender and to the their heirs and assigns Three certain lots or pieces of ground situate in the Town of Easton in the Borough of Easton in the County of Northampton one of them situated on the East side of Pemfret Street being the two contiguous lots named in the general plan of the said Town No. 70 and 72 containing in breadth together one hundred and ten feet and in length or depth two hundred and forty feet bounded southward by a twenty feet wide alley eastward by another twenty feet wide alley Northward by lot No. 68 and westward by Pomfret Street aforesaid (on which lots the said congregation have erected a church and a school house) Another of them situate on the east side of Ferry Street being the two contiguous lots marked in the general plan of the said Town of Easton No. 179 and No. 180. containing in breadth together on the said Ferry Street one hundred and ten feet and in length or depth two hundred and twenty feet Bounded eastward by lot No. 178 southward by a twenty feet wide alley westward by Hamilton Street and northward by Ferry Street aforesaid And the other of them situate on the east side of John Street Containing in breadth east and west three hundred and fourteen feet and in length or depth north and south two hundred and seventy-five feet Bounded eastward by Juliana street Southwardly by a twenty feet wide alley and westward by John street aforesaid together with all and singular the ways waters and watercourses rights liberties and privileges hereditaments and appurtenances what soever thereunto belonging or in any wise appertaining and the reversions and remainders rents dues and profits |
(61) thereof and all the estate right title and interest property claim and demand whatsoever of them the said John Penn and Richard Penn

respectively in law equity or otherwise howsoever of in and to the same To Have and To Hold all and singular the premises heerby granted with the apputenances unto the said Peter Snyder Nicholas Droxell Nicholas Kern Jecob Waygandt William Roup and Conard Bittenbender their heirs and assigns forever In trust nevertheless as for and concerning the first above described lot of ground as a site for the Church or House of Religious Worship and school house erected thereon and such other buildings as may be deemed necessary for the conveniency of the said Congregation and as for and concerning the two last above described lots of ground as burial places for the use of the German Reformed and German Lutheran Congregations in and near the Town of Easton aforesaid and in confidence that the said Peter Snyder Nicholas Droxell Nicholas Kern Jacob Waygandt William Roup and Conard Bettenbender and the survivors and survivor of them their and his heirs and assigns do and shall permit and suffer all and singular the premises hereby granted and every part thereof and the building thereon erected to be at all times forever at the disposal and under the care regulation and management of the said German Reformed and German Lutheran Congregations in and near the Town of Easton aforesaid or under the care regulation and management of the Trustees elders and Church Wardens of the said Religious Societies for the time being or a majority of them and to and for no other use purposenwhatsoever and the said John Penn and Richard Penn for them selves their heirs executors and administrators respectively do by their said attorney covenant promise and agree to and with Peter Schnyder Nicholas Droxell Nicholas Kern Jacob Waygandt William Roup and Coned Bittenbender their heirs and assigns by these presents that they | the said John Penn and Richard Penn and (62)
their heirs respectively all and singular the premises hereby granted with the appurtenances unto the said Peter Schnyder Nicholas Droxell Nicholas Kern Jacob Waygandt William Roup and Conard Bittenbender their heirs and assigns in trust for the uses aforesaid against them the said John Penn and Richard Penn and their heirs respectively and against all and every other person or persons whatsoever lawfully claiming or to claim by from or under them or any or either of them shall and will Warrant and forever defend by these presents IN WITNESS the said parties have hereunto interchangeably set their hands and seals Dated the day and year first above written.

Sealed and delivered in the presence of us
FREDK. BEATES PHILIP
T. DUNN.

JOHN PENN [SEAL]
RICHARD PENN [SEAL]
by their attorney
JOHN R. COATES [SEAL]

Received the day of the date of the above written Indenture of the above named PetermSchnyder Nicholas Droxell Nicholas Kern Jacob

Waygandt William Roup and Conard Bettenbender the sum of tendollar being the full consideration money above ment ioned for the Honorable John Penn and Richard Penn Esquires.
Witness

FREDK. BEATES JOHN R. COATES

The twenty-third day of June A. D. 1802 before me the subscriber Mayor of the City of Philadelphi a came the above named John R. Coates and in his own name and in the name of his constituents the above named John Penn and Richard Penn in due form of law acknowledge the above written Indentur to be his own act and deed of his said constituents by the said JohnR. Coates done and executed by virtue of a letter of Attor-
(63) ney to him for that purpose granted and | and desired the same might be recorded as such. Witness ny hand and seal the day and year aforesaid.

MAT. LAWLER Mayor [SEAL]

Recorded the 20th Sept. 1802.

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF NORTHAMPTON) ss

I George Hess Recorder of Deeds &c. in and for said County do hereby certify that the above and foregoing is a true and correct copy of the Deed recorded in Deed Book G. Vol. 2 Page 402 &c. so full and entire as the same remains of record in my said office IN testimony whereof I havehereunto set my hand and affixed the seal of my said office at Easton this 2nd day of October A. D. 1889.

GEORGE R. HESS
Recorder.

[SEAL] Per SAM. S. YOHE *Deputy.*

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(64) EXHIBIT No. 14.

THIS IS TO CERTIFY,

First, That the records of the Department of Internal Affairs of Pennsylvania show that a number of warrants were issued for lots in the town of Easton, Pennsylvania: that the surveys were made in pursuance thereof, and that the patents were granted for said lots by the *Proprietaries of the Province of Pennsylvania.*

Second, That a thorough search has been made among the records of the Department, but no evidence can be found to indicate that any warrants were issued, any surveys made, or any patents granted by the *Commonwealth of Pennsylvania* for any lots in the town of Easton, Pennsylvania.

IN WITNESS WHEREOF, I have hereunto set my hand, caused the seal of said Department to be affixed at Harrisburg, this third day of October, A. D. 1889.

ISAAC B. BROWN,
[SEAL.] *Deputy Secretary of Internal Affairs.*

EXHIBIT No. 15. (65)

STUART vs. EASTON. United States Circuit Court. April Sessions, 1888. No. 51.

And now to wit the 3rd. day of April A. D. 1895, it is agreed be and between counsel in the above cause as follows:

That William Stuart, the plaintiff above named, has since the commencement of the present suit departed this life, and that his son, William Dugald Stuart, an Alien and subject of the Queen of Great Britain resident in England, has become entitled to all the rights of the said William Stuart in Pennsylvania, and that therefore it is agreed that his name shall be substituted upon the record in the place of the said William Stuart.

It is further agreed that the said William Dugald Stuart, and William Stuart and his father William Stuart, Thomas Gordon Penn, Granville John Penn and Richard Penn successors in estate to Richard and Thomas Penn, Proprietaries of Pennsylvania since 1850 have been each and all of them aliens and subjects of the Queen of Great Britain resident in England.

That the City of Easton and County of Northampton are corporations incorporated under the laws of the State of Pennsylvania and citizens of the said State resident in the Eastern District of Pennsylvania.

C. B. TAYLOR,
Att'y for Wm. Dugald Stuart.
H. J. STEELE.
Att'y for the City of Easton.

And thereupon the counsel for the said plaintiff did then and there (66) except to the aforesaid charge and opinion of the said court, and in as much as the said charge and opinion: so excepted to, do not appear upon the record:

The said Counsel for the said Plaintiff did then and there tender this bill of exceptions to the opinion of the said Court, and requested the seal of the Judge aforesaid should be put to the same, according to the form of the Statute in such case made and provided, and thereupon the aforesaid Judge at the request of the said Counsel for the Plaintiff did put his seal to this bill of Exceptions, pursuant to the aforesaid Statute in such case made and provided, this 19th day of April A. D. 1895.

Signed, GEO. M. DALLAS, [SEAL]
Cir. J.

Endorsed: U. S. C. C. Eastern Dist. of Penna. 51. Apl. Sess. '88. Stuart *v.* Easton. Bill of Exceptions. Presented Apl. 13, 1895. G. M. D. C. B. Taylor, A. T. Freedley, Wm. Brooke Rawle. Filed April 20, 1895.

(67) STUART vs. EASTON. | C. C. U. S. Eastern Dist. Pa. April Sess., 1888. No. 51.

The above plaintiff believing himself to be aggrieved by the final judgment entered against him on the 6th day of April, 1895, in the above cause, hereby prays for a writ of error to the United States Circuit Court of Appeals, 3rd Circuit, and that a transcript of the record and proceedings and papers on which said final judgment was entered duly authenticated may be sent to the United States Circuit Court of Appeals, 3rd Circuit.

C. B. TAYLOR,
A. T. FREEDLY,
WM. BROOKS RAWLE,
Attorneys for Plaintiffs.

Allowed May 3, 1895.
GEO. M. DALLAS,
Cir. J.

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(68) WILLIAM DUGALD STUART, an alien, &c.

vs.

THE CITY OF EASTON AND COUNTY OF NORTHAMPTON, citizens of Pennsylvania, &c.

ASSIGNMENTS OF ERROR.

First:—The learned Judge below erred in instructing the jury to find a verdict for the defendant.

Second:—The learned Judge erred in instructing the jury as follows: "I therefore instruct you that such is the effect of the conveyance, and the plaintiff is not entitled to maintain this action and your verdict should therefore be for the defendant."

Third:—The learned Court below erred in not instructing the jury that the effect of the patent of the 28th September, 1764, was to create a conditional estate in the grantees therein and those claiming under them.

Fourth:—The learned Court below erred in refusing to admit in evidence plaintiff's Exhibit No. 11 (printed Record, page) being deed Thomas and Richard Penn, proprietaries of Pennsylvania, to Thomas Craig, *et al.*, for the prison lot in the town of Easton, dated 18th January,

1763. Recorded February 10th, 1763, in Patent Book A. A., No. 4, page 220, &c.

Fifth:—The learned Court below erred in refusing to admit in evi- (69)
dence plaintiff's Exhibit No. 12 (printed Record, page 25) being deed Granville John Penn and Richard Penn, proprietaries of Pennsylvania, to county of Northampton, for the conditional estate of the said proprietaries in the prison lot in the town of Easton, dated 24th September, 1852, recorded at Easton in Deed Book F., Vol. VIII, page 226, &c.

Sixth:—The learned Court erred in refusing to admit in evidence plaintiff's Exhibit No. 13 (printed Record, page 27) being deed John Penn and Richard Penn, proprietaries of Pennsylvania, to Peter Snyder, *et al.*, for lots Nos. 70 and 72, 179 and 180, in the town of Easton, dated June 25rd, 1802, recorded at Easton 20th September, 1802, in Deed Book G, Vol. 11, page 402, &c.

Seventh:—The learned Court below erred in refusing to admit in evidence plaintiff's Exhibit No. 14 (printed Record, page 30) being a certificate from the land office in Pennsylvania showing that no warrants, surveys, or patents had been issued by the Commonwealth of Pennsylvania for lots in the town of Easton, Pa.

Know all men by these presents, That we, William Dugald Stuart, by (70)
his Attorney in fact William Brooke Rawle (see letter of Attorney, Book No. 81, page 61, &c.), as principal, and Francis F. Eastlake, Jr. and The Land Title and Trust Company as sureties, are held and firmly bound unto the City of Easton and the County of Northampton in the full and just sum of five hundred dollars to be paid to the said the City of Easton and the County of Northampton, their certain attorneys, successors or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this sixth day of May, in the year of our Lord one thousand eight hundred and ninety-five (1895).

WHEREAS, lately at a term of the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, in a suit depending in said Court, between said William Dugald Stuart, an alien or subject of the Queen of Great Britain residing in London, England *vs.* The City of Easton and the County of Northampton, corporations of the State of Pennsylvania, citizens of said State and residing in the Eastern District thereof, a judgment was rendered against the said plaintiff, and the said plaintiff having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the city of Philadelphia, within thirty days.

Now, the condition of the above obligation is such, That if the said William Dugald Stuart shall prosecute his writ to effect, and answer all

damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM DUGALD STUART, [SEAL.]
By his Attorney in fact.
WM. BROOKE RAWLE, [SEAL.]
FRANCIS F. EASTLAKE, JR., [SEAL.]

The Land Title and Trust Company,
Attest: WM. R. NICHOLSON.
[CORPORATE SEAL.] *President.*

Sealed and delivered in presence of
S. ROLLASON RAINNIE,
H. J. SHARP.

Approved by
GEO. M. DALLAS,
Cir. J., May 10, 1895.

ALBERT D. FELL,
[CORPORATE SEAL.] *Secretary.*

Endorsed: No. 51. April Sess., 1888. C. C. U. S. E. D. of Pa. William Dugald Stuart *vs.* The City of Easton, *et al.* Bond sur writ of error. Filed May 10, 1895.

SAMUEL BELL.
Clerk C. C.

(71) UNITED STATES OF AMERICA, }
EASTERN DISTRICT OF PENNSYLVANIA, } *sct.*

I, SAMUEL BELL, Clerk of the Circuit Court of the United States of America, for the Eastern District of Pennsylvania, in the Third Circuit, do hereby certify the following to be a true and faithful copy of the original Pleas and Proceedings in the case of William Dugald Stuart *vs.* The City of Easton, *et al.* No. 51. April Session, 1888, on file and now remaining among the records of the said Court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

[SEAL] SAMUEL BELL,
Clerk of C. C.

39 U. S. Circuit Court of Appeals, Third Circuit.

And afterwards, to wit, on the twenty-third day of September, A. D. 1895, this cause being called for argument upon the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania and being argued by counsel for the respective parties, *and* the court, not being fully advised in the premises, takes further time for consideration thereof.

And afterwards, to wit, on the fourth day of June, A. D. 1896, comes the parties aforesaid, by their counsel aforesaid, and the court, now being fully advised in the premises, renders the following opinion, to wit:

40 In the United States Circuit Court of Appeals for the Third Circuit.

WILLIAM DUGALD STUART, an Alien and Subject of the Queen of Great Britain, Plaintiff in Error,

v.

THE CITY OF EASTON and THE COUNTY OF NORTHAMPTON, Corporations of the State — Pennsylvania, Defendants in Error.

Error to the circuit court of the United States for the eastern district of Pennsylvania.

Before Shiras, circuit justice, and Acheson and Butler, JJ.

ACHESON, *Circuit Judge:*

This was an action of ejectment by William Dugald Stuart, an alien and subject of the Queen of Great Britain, against The City of Easton and County of Northampton, corporations of the State of Pennsylvania.

The county of Northampton was laid out and erected by an act of the General Assembly of the Province of Pennsylvania passed the 11th day of March, 1752 (1 Dallas' Laws, 452). The sixth section of the act provided as follows: "And be it further enacted, that it shall and may be lawful to and for Thomas Craig, Hugh Wilson, John Jones, Thomas Armstrong, and James Martin, or any three of them, to purchase and take assurance to them and their heirs, of a piece of land situate in some convenient place in the

41 said town (Easton), in trust and for the use of the inhabitants of the said county, and thereon to erect and build a court-house and prison, sufficient to accommodate the public service of the said county and for the ease and conveniency of the inhabitants."

On the 9th day of July, 1762, Thomas and Richard Penn, the proprietaries of Pennsylvania, caused to be issued a warrant of survey which, after reciting the above-mentioned act, proceeded thus: "And whereas on application and request of said trustees and out of regard to encourage and promote the improvement of

the said town and general good and convenience of the inhabitants of the said county we have condescended and agreed to grant to the said trustees a lot or piece of ground of eighty feet square, to be laid out in the center of the great square in the middle of the said town of Easton, for a court-house for the use and the accommodation of the inhabitants of the said town and county forever;" and the warrant then directed the surveyor general to survey and lay out the said described lot of ground "for the public use of a court-house for the inhabitants of the said town and county."

This warrant having been duly executed and returned into the land office, a patent was issued on the 28th day of September, 1764, by the proprietaries to the named trustees for said lot. After reciting the act of assembly and the warrant of survey, the patent proceeds thus: "Now, know ye, that for the further encouragement and better promoting the public benefit and service of the said town and county, and for and in consideration of the yearly quitrent (one red rose) hereinafter reserved and of the sum of five shillings to us in hand paid by the said trustees, the receipt whereof is hereby acknowledged, we have given, granted, released, and con-
42 firmed, and by these presents do give, grant, release, and confirm, unto the said trustees, John Jones, Thomas Armstrong, James Martin, John Rinker, and Henry Allshouse, and their heirs the said lot of ground situate in the center of the great square in the said town of Easton, containing eighty feet in length north and south and eighty feet in breadth east and west; * * * to have and to hold the said hereinbefore-described lot of ground, with the appurtenances, unto the said John Jones, Thomas Armstrong, James Martin, John Rinker, and Henry Allshouse, their heirs and assigns forever, in trust, nevertheless, to and for the erection thereon a court-house for the public use and service of the said county and to and for no other use, intent, or purpose whatsoever."

By virtue of an act of assembly approved April 15, 1834 (P. L., 538), the title of the trustees became vested in the county of Northampton.

The Northampton county court-house was erected upon the said lot of ground between the years 1763 and 1766 and remained upon the lot from that time until 1862, in which year it was removed, and no other buildings have been erected thereon since.

On the 25th day of July, 1888, William Stuart, who was the heir-at-law of Thomas and Richard Penn, caused an entry to be made on the said lot of ground for breach of the condition subject to which, it is alleged, the lot was granted by the above-recited patent, and subsequently he brought this action of ejectment for the recovery of the lot.

William Stuart having died after the commencement of the suit, his son, William Dugald Stuart, who succeeded to all the
43 rights of the said William Stuart in and to lands in Pennsylvania, was substituted as plaintiff.

Under the instructions of the court below there was a verdict for the defendants, and afterwards judgment was entered in their favor.

The position taken by the plaintiff in error is that the grant of

September 28, 1764, by Thomas and Richard Penn to John Jones and others, "their heirs and assigns forever, in trust, nevertheless, to and for the erecting thereon a court-house for the public use and service of the said county and to and for no other use, intent, or purpose whatsoever," did not pass an estate in fee-simple, but only a conditional estate, determinable on the cessation of the use of the lot of ground for the designated purpose. Is this a sound view of the conveyance?

It is to be observed that the deed from the Penns recites as the occasion of the grant the act of the General Assembly under which, as we have seen, John Jones and others were empowered "to purchase and take assurance to them and their heirs" of a piece of land "in trust and for the use of the inhabitants of the said county," and thereon to erect a court-house "for the ease and conveniency of the inhabitants." Undoubtedly, the act of assembly contemplated the acquisition of an estate in fee-simple only by the appointed trustees. Now, the conveyance by the Penns is to the named persons, "their heirs and assigns forever." The succeeding words, "in trust, nevertheless, to and for the erecting thereon a court-house for the public use and service of the said county, and to and for no other use, intent, or purposes whatsoever," define the relation between the grantees and the inhabitants of the
44 county of Northampton, and restrain the grantees from any other application of the property than to the avowed object of the grant. The words of the deed are apt words to pass a fee-simple estate as between the grantors and the grantees, and to create a trust as between the grantees and the beneficiaries. There is here no express provision for forfeiting the estate for non-user, nor is any right of re-entry expressly reserved to the grantors or their heirs in the event of the cessation of the use of the lot for the designated purpose. The object of the grant was the public benefit and service of a growing community throughout all future changes in the condition and circumstances of that community, and the purpose of the grant could be subserved best by the conveyance of an absolute estate. In the absence, then, of express stipulation, is it to be supposed that the grant of a conditional estate determinable by re-entry upon non-user was intended?

In Wright *v.* Linn, 9 Pa., 433, where land was conveyed to certain named persons and their successors, in trust to erect a school-house for the perpetual use of the parties to the deed and other designated persons, it was held that a charity was created which was not determined by non-user for more than seventeen years after a school-house had been erected and used and a re-entry by the grantor. In McKissick *v.* Pickle, 16 Pa., 140, 148, the court declared: "The grant, being for a charity, could not be forfeited for non-user, nor for misuser, except under an express condition or contract;" and the court furthers said: "The law raises every intendment in favor of a charity against the grantor or those claiming under him." In Griffiths *v.* Cope, 17 Pa., 96, 99, in con-
45 struing a devise to charitable uses the court said: "Our law discourages the fettering of estates and putting them into

mortmain, and therefore favors the construction which relieves from restraints upon alienation, and it seems unreasonable to suppose that devisor ever means that his heirs shall get back the land in in such cases except when he says so. * * * It would seem contrary to public policy to favor a construction that would give to a man who died a hundred or a thousand years ago the control of land that ought to be controlled by the present generation. Such an intention ought to be expressed, not implied." In Barr *v.* Weld, 24 Pa., 84, 87, where a conveyance was "in trust for the Utica school house," the court said: "There is no express condition or contract giving to the grantor or his heirs the right to enter for condition broken or for misuser. He had, therefore, no right to maintain an ejectment, and the plaintiff claiming under him is in the same predicament." *In re* Mercer Home, 162 Pa., 232–238, where a testatrix devised a farm to a charitable use as a home for disabled clergymen and directed that no part thereof "shall be sold or disposed of, incumbered, or applied to any other use or purpose than as a home for disabled clergymen of the Presbyterian faith, as above specified," it was held that, as the testatrix created no remainder or reversion, the charity took an estate in fee-simple; that the heirs of the testatrix had no interest, direct or remote, in the property, and that nothing short of a plain, unequivocal direction that no part of the land should be parted with for any purpose whatsoever ought to be held sufficient to restrain the managers from doing that which the interest of the charity under their control required of them.

These decisions of the supreme court of Pennsylvania are conclusive, we think, against the claim of the plaintiff in error
46 if, as is contended by the defendants, the grant by the Penns was for a charitable use. To the question, then, whether the use designated in and by the deed of September 28, 1764, is of a charitable nature we now direct our attention.

Although the statute of 43 Eliz., ch. 4, concerning charitable uses, was not adopted by the colony or State of Pennsylvania, still the principles of it as applied by chancery in England always have obtained here by force of the common law of the State. Witman *v.* Lex, 17 Ser. & R., 88. This was clearly shown by Mr. Justice Baldwin (sitting at circuit in this State) in his learned opinion upon charitable uses in the case of Magill *v.* Brown, Brightly's R., 347, 16 Fed. Cas., 408, which arose under the will of Sarah Zane, wherein also he demonstrated that the whole course of the common law of England, except as modified for special purposes of policy by the statutes of mortmain and superstitious uses, was favorable to charities. And in Ould *v.* Washington Hospital for Foundlings, 95 U. S., 303, 309, 311, the Supreme Court of the United States declared that the statute of 43 Eliz., ch. 4, was purely remedial and ancillary, and that the validity of charitable endowments and the jurisdiction of courts of equity over them do not depend upon that statute.

Now, in Jones *v.* Williams, Amb., 651, Lord Camden defined a charity to be "a gift to a general public use which extends to the poor as well as the rich;" and a bequest of a fund to be applied to

water works for the use of the inhabitants of a town was there recognized as for charitable use. In House *v.* Chapman, 4 Ves., Jr., 542, 551, it was held that a bequest for the improvement of
47 the city of Bath was a charitable bequest. In British Museum *v.* White, 2 Sim. & S., 595, a devise to the British museum was adjudged to — for a charitable use. In Attorney General *v.* Heelis, 2 Sim. & S., 67, 76, where a part of a common was dedicated for paving, lighting, cleansing, and otherwise improving a town, the funds derived therefrom were held to constitute a charity, and the vice-chancellor (Sir John Leach), there said: "I am of opinion that funds supplied from the gift of the Crown or from the gift of the legislature, or from private gift for any legal, public, or general purpose, are charitable funds, to be administered by courts of equity. It is not material that the particular public or general purpose is not expressed in the statute of Elizabeth, all other legal, public, or general purposes being within the equity of that statute. Thus * * * a gift to build a sessions house for a county, a gift by Parliament * * * for the purpose of rebuilding St. Paul's church after the fire in London, have all been held to be charitable uses within the equity of the statute of Elizabeth."

These English cases are cited with approval in the opinion of the supreme court of Pennsylvania in Wright *v.* Linn, *supra*, and the deduction therefrom made "that every kind of legal public benefaction is included in the notion of charity."

In Coggeshall *v.* Pelton, 7 Johns. Ch., 292, a pecuniary legacy to the town of New Rochelle for the purpose of erecting a town-house for transacting town business was held to be a valid charitable bequest. In Magill *v.* Brown, *supra*, a bequest to a town for a fire-engine and hose was sustained as for a charitable use. These two latter cases were cited with approval in Cresson's Appeal, 30
48 Pa., 437, 450, wherein it was held that a legacy the income of which was to be "annually forever expended in planting and renewing shade trees, especially in situations now exposing my fellow-citizens to *be* the heat of the sun," and a legacy "to endow a professorship of the fine arts" in the University of Pennsylvania, were good bequests to charitable uses. The court there said: "Charity has been defined to be a general public use. Amb., 651."

In Fire Insurance Patrol *v.* Boyd, 120 Pa., 624, 644, 645, it was held that the Fire Insurance Patrol of Philadelphia, a corporation to save life and property in and contiguous to burning buildings, being without money capital, but supported by voluntary contributions of fire insurance companies, making and dividing no profits and saving property, whether insured or not, is a public charity. In the course of its opinion the court approved Lord Camden's definition of a charity, expressed in Jones *v.* Williams, *supra*, and also quoted approvingly the definition of a charity formulated by Mr. Justice Gray in Jackson *v.* Phillips, 14 Allen, 539, 556, as follows: "A charity in legal sense may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion; by relieving their

bodies from disease, suffering, or constraint; by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government."

In Perin *v.* Carey, 24 How., 465, 506, the Supreme Court of the United States said: "All property held for public purposes
49 is held as a charitable use in the legal sense of the term charity;" and in Ould *v.* Washington Hospital for Foundlings, *supra*, the court declared: "A charitable use, where neither law nor public policy forbids, may be applied to almost anything that tends to promote the well doing and well being of social man."

Guided by the foregoing authorities, we confidently reach the conclusion that the grant by the Penns of the lot of ground in controversy in trust for the erection thereon of a court-house for the public use and service of the county of Northampton was a grant for a charitable use in the legal sense. Now, as we have already seen, the deed of conveyance contains no express provision for a forfeiture or reverter to the grantors or their heirs in the event of non-user or misuser, and, in the absence of such express provision, no right or re-entry to defeat the charitable use is to be implied. It follows, therefore, that the plaintiff was without title to maintain this ejectment. For the non-use or misuse of the trust property, the county of Northampton is answerable only to those immediately interested in the trust or to the Commonwealth of Pennsylvania. Barr *v.* Weld, *supra*; Vidal *v.* Girard's executors, 2 How., 127, 191; *In re* Mercer Home, *supra*.

The court below was right in instructing the jury to find a verdict for the defendants, and accordingly the judgment is affirmed.

50 United States Circuit Court of Appeals, Third Circuit, September Term, 1895.

WILLIAM DUGALD STUART, an Alien and Subject of the Queen of Great Britain, Resident in England, Plaintiff in Error,	
vs.	No. 18.
CITY OF EASTON AND COUNTY OF NORTHAMPTON, Corporations Incorporated under the Laws of the State of Pennsylvania and Citizens of the said State, Resident in the Eastern District of Pennsylvania.	

In error to the circuit court of the United States for the eastern district of Pennsylvania.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

Philadelphia, June 9, 1896. WM. BUTLER, *J.*

51 UNITED STATES OF AMERICA, *sct:*

I, William V. Williamson, clerk of the United States circuit court of appeals for the third circuit, do hereby certify the foregoing pages from one to fifty-one, inclusive, to contain a full, true, complete, and faithful copy of the original transcript of record in the case of William Dugald Stuart, an alien and subject of the Queen of Great Britain, resident in England, plaintiff in error, *vs.* City of Easton and County of Northampton, corporations incorporated under the laws of the State of Pennsylvania and citizens of the said State, resident in the eastern district of Pennsylvania, No. 18, September term, 1895, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this seventh day of July, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of United States the one hundred and twenty-first.

Seal United States Circuit Court of Appeals, Third Circuit.

WM. V. WILLIAMSON,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

52 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the third circuit, Greeting:

Being informed that there is now pending before you a suit in which William Dugald Stuart is plaintiff in error and The City of Easton and The County of Northampton, defendants in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the eastern district of Pennsylvania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed
53 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the fifth day of November, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

54 [Endorsed:] Supreme Court of the United States. No. 556. October term, 1896. William Dugald Stuart *vs.* The City of Easton *et al.* Writ of certiorari.

55 WILLIAM DUGALD STUART, an Alien, a Subject of the Queen of Great Britain, Residing in London, England.
vs.
THE CITY OF EASTON AND COUNTY OF NORTHAMPTON, Corporations of the State of Pennsylvania, Citizens of said State and Residents of the Eastern District Thereof.

U. S. S. C., Oct. Term, 1896. No. 556.

It is understood and agreed by and between counsel in the above cause that the certified copy of the record presented with the petition for a writ of certiorari from the determination of the circuit court of appeals of the 3rd circuit in the above case, of *of* October term, 1895, No. 18, shall be taken as a return to the writ of certiorari issued by this court to said circuit court of appeals.

AARON GOLDSMITH,
Attorney for City of Easton.
EDW'D J. FOX,
Solicitor for the County of Northampton.
C. BERKELEY TAYLOR,
A. T. FREEDLEY,
WM. BROOKE RAWLE,
For Plaintiff in Error, Plaintiff Below.

56 UNITED STATES OF AMERICA, *sct:*

I, William V. Williamson, clerk of the United States circuit court of appeals for the third circuit, by virtue of the foregoing writ of certiorari and in obedience thereto, do hereby certify to the Supreme Court of the United States the consent of the counsel for the respective parties thereto annexed as my return to the said writ.

Seal United States Circuit Court of Appeals, Third Circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this ninth day of December, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twenty-first.

WM. V. WILLIAMSON,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

57 [Endorsed:] No. 556. Oct. term, 1896. United States circuit court of appeals, third circuit. Wm. Dugald Stuart *vs.* The City of Easton *et al.* Certified copy of consent of counsel to return of writ.

58 [Endorsed:] Case No. 16,335. Supreme Court U. S., October term, 1896. Term No., 556. Wm. Dugald Stuart, plaintiff in error, *vs.* The City of Easton *et al.* Writ of certiorari & return. Filed Dec. 10, 1896.